

NA 04-0227-C H/H UTU v CSX
Judge David F. Hamilton

Signed on 7/20/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

| | | |
|------------------------------|---|---------------------------|
| UNITED TRANSPORTATION UNION, |) | |
| WILLIAM JANES, |) | |
| |) | |
| Plaintiffs, |) | |
| vs. |) | NO. 4:04-cv-00227-DFH-WGH |
| |) | |
| CSX TRANSPORTATION INC., |) | |
| |) | |
| Defendant. |) | |

UNITED STATES DISTRICT COURT
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| UNITED TRANSPORTATION UNION |) | |
| and WILLIAM S. JANES, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | CASE NO. 4:04-cv-0227-DFH-WGH |
| v. |) | |
| |) | |
| CSX TRANSPORTATION, INC., |) | |
| |) | |
| Defendant. |) | |

ENTRY ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This case involves the arbitration of a minor dispute under the Railway Labor Act that has been stuck in legal limbo for several years. The material facts are undisputed, and both sides have moved for summary judgment. Plaintiffs United Transportation Union and William Janes (jointly “UTU”) believe that two of the three members of the arbitration panel, known as a Public Law Board, agreed on a final and binding arbitration award, and plaintiffs seek to enforce it. Defendant CSX Transportation, Inc. argues that the award UTU seeks to enforce was only a draft, conditioned on neither party’s seeking further discussion between members of the arbitration panel. CSX sought further discussion, so it claims the condition was not met and that the award in favor of UTU was never final. As explained below, though, the undisputed facts show that CSX’s request came too late, after the award had been signed by two members of the arbitration

panel and had become final. The court therefore grants the UTU's motion for summary judgment and enters a judgment enforcing the award.

I. *Summary Judgment Standard*

In suits to enforce arbitration awards, cross-motions for summary judgment are often the appropriate procedural path to judgment. Legal issues tend to predominate. Only genuine disputes over material facts can prevent a grant of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it might affect the outcome of the suit under the governing law, and a dispute about a material fact is genuine only if the evidence would allow a reasonable jury to return a verdict for the non-moving party. *Id.* When deciding a motion for summary judgment, the court considers those facts that are undisputed and views additional evidence, and all reasonable inferences drawn therefrom, in the light reasonably most favorable to the non-moving party. *Id.* at 255.

II. *Undisputed Facts*

Because the court is granting UTU's motion, the facts set forth here reflect the evidence in the light reasonably most favorable to defendant CSX; there is no material dispute over the facts. CSX is a railroad and the UTU represents many railroad craft employees, including conductors, yardmen, and trainmen. In March 2000, a dispute arose between UTU and CSX regarding whether non-craft

employees were performing work that the collective bargaining agreement allotted to craft employees. The issue amounted to a “minor dispute” under the Railway Labor Act (“RLA”), 45 U.S.C. § 151 *et seq.*, because it involves the interpretation of the collective bargaining agreement. Minor disputes go through a resolution process at the local level that includes conferences and a grievance process. If the parties do not agree on a resolution, the RLA provides for final and binding arbitration before the National Railroad Adjustment Board. 45 U.S.C. § 153 First (i). In this instance no agreement was reached and the matter was submitted to the Adjustment Board for final resolution. The company and the union each selected one representative for a three member panel. Those two members then selected a neutral third member to complete the Adjustment Board panel, which was also given a number and is referred to as a Public Law Board.

The neutral member of the Public Law Board in this case was Barry Simon. The CSX panel member was Patricia Madden, the senior director of labor relations for CSX. The UTU member was Roy Boling, the international vice president of UTU. Together the three made up what was designated as Public Law Board No. 6398. Each side submitted written materials to the neutral. Those materials set forth precedent and argument in support of the respective positions. As appears to be the custom, neutral Simon drafted awards ruling on a number of disputes that were before his panel, including the one at issue here, which had been designated as dispute No. 16.

On May 27, 2003, Simon signed the awards and sent them on to Madden and Boling with a cover letter that read as follows:

Enclosed are my proposed Awards in Case Nos. 15, 16, 18, 19 and 20 of the above identified Public Law Board. They are numbered as Award Nos. 15, 16, 18, 19 and 20, respectively. My signature on these awards is conditional upon there being no request for executive session within fifteen days of receipt of the awards. Please execute these awards by exchanging copies between you for signature. I would appreciate Ms. Madden sending me a copy of the fully executed awards for my files.

Simon's signed Award No. 16 rule in favor of UTU. Executive sessions, as referenced in Simon's letter, are panel meetings that Public Law Boards may convene without the attendance of advocates for the parties. "Executive sessions are held at PLB hearings to discuss pending cases, resolve procedural matters, or determine matters remaining from previous PLB hearings." *Smoot v. United Transportation Union*, 246 F.3d 633, 636 (6th Cir. 2001).

The undisputed facts show that Madden received the proposed awards on May 30, 2003. On June 14, 2003, Boling signed all of the awards and forwarded them on to Madden for her signature. Boling's cover letter asked Madden to sign each order and to return one original of each to Boling for his files. The letter also contained a sentence which read: "Should you desire an Executive Session to discuss one or more of these decisions, please advise." Madden never signed the awards. Instead, on June 17, 2003, Madden wrote to Simon and Boling to request an executive session concerning Award No. 16. She made her request more than 15 days after she received the signed proposed award, and after Boling had signed

it. Nevertheless, the Public Law Board held an executive session on July 8, 2003, at which Madden argued that Award No. 16 should be changed to favor CSX.

Nothing further happened with regard to Award No. 16 until April 27, 2004, when neutral Simon sent a revised unsigned award to Boling and Madden. The new unsigned document would favor CSX. Simon's accompanying cover letter read as follows:

Enclosed is Award No. 16 of the above identified Public Law Board, revised subsequent to Executive Session. As you can see, I have taken the extraordinary action of reversing the decision from my original proposed Award. You will see, however, that I have not changed my interpretation of the Agreement. After a long and careful review of the entire record in this dispute, I am satisfied that my initial interpretation was correct. However, during this review it became apparent to me that the facts in the case were not exactly as I had originally stated them. This, of course, led to a different conclusion as to the merits of the claim.

Please execute this Award by exchanging copies between you for signature. I would appreciate Ms. Madden sending me a copy of the fully executed Award for my files.

Boling responded to Simon's letter with a letter dated May 5, 2004 expressing confusion with regard to the new award and requesting another executive session. In a letter dated May 13, 2004, neutral Simon responded by indicating that further discussion of Award No. 16 could be had at the next regular session of the Board or via telephone conference. Boling's approach changed at that point. He wrote to Simon stating that UTU believed that the original award issued in May 2003 was a valid award after Boling signed it and that the July 2003 executive session provided no new facts to provide a basis for

changing the decision. Boling later wrote to CSX to ask when it would implement and pay the May 2003 award. After there had been no response from CSX, he sent a follow-up letter to the company in September 2004.

In a September 21, 2004 letter to Boling, Madden wrote that CSX believed the executive session held in July 2003 voided Simon's signature on the initial award and left the April 27, 2004 award as the official award. Madden attached a copy of that revised award, signed only by her, and asked Boling to execute the same. She copied Simon with the letter. Simon has never signed the revised April 27, 2004 award. In a letter dated October 12, 2004, Boling reiterated the union position that the initial award was the official and final award because it was the only award signed by the two panel members necessary to make an award effective. CSX refused Boling's request to implement the initial decision. UTU filed this action to enforce the May 27, 2003 award.

III. *Discussion*

UTU argues that Award No. 16 was effective when Boling added his signature to Simon's, fifteen days after Boling and Madden had received the award from Simon. The contingency Simon had placed on the effectiveness of his signature, the passing of fifteen days without a request for an executive session, had expired. Pursuant to the RLA, it takes only two members of a three member Adjustment Board panel to render an award. See 45 U.S.C. § 153 Second ("Any two members of the board shall be competent to render an award. Such awards

shall be final and binding upon both parties to the dispute. . . .”); accord, *United Transportation Union v. Grand Trunk Western Railroad Co.*, 1998 WL 404384, 157 LRRM (BNA) 3021 (N.D. Ohio March 3, 1998) (enforcing RLA arbitration award signed by two members; agreement of two members is sufficient to resolve dispute, so third member’s later request for an executive session did not affect validity of award).

In response, CSX does not quarrel with the rule that two signatures are sufficient to have a binding award. Instead, CSX argues that Simon’s signature was conditioned upon there being no request for an executive session. Since CSX requested an executive session and one was held, CSX contends that Simon’s signature was nullified. CSX argues that the initial award signed by Simon on May 27, 2003 was a draft and therefore not intended by Simon to be effective, without either side having a further opportunity to argue its merits. In response to the biggest weakness in this argument, the 15-day limit in Simon’s contingency, CSX argues that Boling and the UTU waived any right to enforce that limit when Boling invited a request for an executive session, attended the executive session as scheduled, and did not seek to enforce the initial award until after Simon changed his mind in April 2004.

The court agrees with UTU and finds that CSX’s arguments are not persuasive. First, although executive sessions may be a common practice in RLA arbitrations, the RLA does not require or even make any provision for executive

sessions. The RLA provides quite clearly that any two panel members who are in agreement are competent to make an award. 45 U.S.C. § 153 Second.

CSX argues that Simon did not intend the May 27, 2003 award to be final because he provided an opportunity to request an executive session. The problem is that CSX's arguments on this point repeatedly ignore the 15-day limit that Simon placed on his contingency. "My signature on these awards is conditional upon there being no request for executive session *within fifteen days* of receipt of the awards." The undisputed facts show that Madden received the awards on May 30, 2003, and that she did not request an executive session until 18 days later, on June 17, 2003. By that time, the contingency had expired and there was a valid and binding award signed by two members of the board.

CSX points out correctly that an arbitrator is free to amend an interim decision and that the intent of the arbitrator determines whether or not an arbitration award is final. See *Anderson v. Norfolk and Western Ry. Co.*, 773 F.2d 880, 883 (7th Cir. 1985) (opinion of Gibson, J.), and cases cited therein. CSX continually refers to the May 2003 award as a "draft" or a proposed non-final award, intending to evoke the circumstance of an incomplete decision making process. The undisputed facts show, however, that the May 27, 2003 document was not a draft. It was a signed award that the neutral would disavow only if a condition were met, and the undisputed fact show that the condition was not met. Cf. *Air Line Pilots Ass'n v. Northwest Airlines, Inc.*, 498 F. Supp. 613, 618-19 (D.

Minn. 1980) (neutral's *unsigned* draft award circulated to parties for comment or reaction was only a draft that was not final or binding).

Simon stated his intent plainly in his letter of May 27, 2003. The awards would become final with another member's signature, so long as no member requested an executive session within 15 days after receiving the awards. No such request was made within that time limit, so Boling's signature on Award No. 16 made the proposed award final. Simon wrote that he was enclosing his "proposed [a]wards", not his "draft" awards. According to Merriam-Webster's Collegiate Dictionary (11th ed. 2003), when used in the context referred to by CSX, "draft" is defined as "a preliminary sketch, outline, or version." The definition of "propose" is "to form or put forward a plan or intention." *Id.* The undisputed evidence shows that Simon's intent at that time was that the signed awards, including No. 16, would become final with another member's signature unless a member requested an executive session within fifteen days of receipt, which did not occur.

CSX's best argument is that the UTU waived a right to enforce the award by failing to object to the executive session request and failing to insist on enforcement of the May 27, 2003 award until after Simon issued the unsigned revised draft award on April 27, 2004. The court is not persuaded by the argument, for three reasons.

First, for the reasons stated above, the May 2003 award became final no later than June 15, 2003 after the second panel member had signed it and the 15-day time given to request an executive session expired with no such request having been made. By the time the UTU supposedly waived its rights, according to CSX, the UTU already had won a valid and binding award.

Second, the RLA contains a two-year statute of limitations for actions to enforce or challenge an arbitration award. 45 U.S.C. § 153 First (r). A cause of action to enforce an award against a carrier does not accrue until the carrier has failed to comply within the time fixed within the award. See *Transportation Communications Int’l Union v. CSX Transportation, Inc.*, 30 F.3d 903, 905 (7th Cir. 1994) (holding that union’s request for interpretation of final award did not toll two-year statute). The May 27, 2003 award gave CSX 45 days to comply with it, so the statute of limitations did not begin to run until July 26, 2003 (measuring the time from the second member’s signature, which made the award final and binding). The UTU filed this action to enforce that final award well within the two-year limitations period. Where Congress has provided that period of limitations, the court should not craft a reason to shorten the time or to require the prevailing union to assert its rights sooner at the risk of waiver.

A finding of waiver here would tend to discourage less formal mechanisms of dispute resolution between parties who must live and work with one another over a long term. The UTU could reasonably decide to be patient about immediate

enforcement of the May 27, 2003 award in the hope of avoiding other or larger controversies (even though this lawsuit shows that such hope was not realized).

Third, there is no evidence that the UTU intentionally waived its right to enforcement of the May 27, 2003 award signed by Simon and Boling. The evidence shows no reason for Boling to believe that an executive session would result in anything more than clarifications or technical corrections. Nor is there evidence that Boling's attendance at the executive session, which CSX interprets as indicating waiver, prejudiced CSX. CSX was in no worse position after Boling rejected the unsigned April 2004 draft than it was in after the first award had been signed by both Simon and Boling and the fifteen day contingency period had passed.

Finally, enforcement of the signed May 27, 2003 award is consistent with the general policies enacted in the RLA. The Supreme Court has explained that Congress intended the Adjustment Board process to be the compulsory, exclusive, and final method for resolving such "minor disputes" under the RLA. *Gunther v. San Diego and Arizona Eastern Ry. Co.*, 382 U.S. 257, 263-64 (1965) ("This Court time and again has emphasized and re-emphasized that Congress intended minor grievances of railroad workers to be decided finally by the Railroad Adjustment Board."); *Brotherhood of Locomotive Engineers v. Louisville and Nashville R. Co.*, 373 U.S. 33, 38-40 (1963). The method of dispute resolution must also be reasonably prompt, and that goal weighs in favor of UTU's position in this case.

If no effect were given to the May 27, 2003 award, then there would be no award in effect and the dispute would remain unresolved more than six years after it first arose. The second draft award was signed only by Madden and is not entitled to any effect or weight at all. See 45 U.S.C. § 158(g) (agreements to arbitrate under the RLA shall stipulate that “the *signatures of a majority* of said board of arbitration *affixed to their award* shall be competent to constitute a valid and binding award”); *Fox v. Northwest Airlines, Inc.*, 2003 WL 22272125, *2 (D. Minn. Sept. 30, 2003) (draft award signed by only one member of board was not final and binding), *aff’d mem.*, 109 Fed. Appx. 131 (8th Cir. 2004); *Air Line Pilots Ass’n v. Northwest Airlines*, 498 F. Supp. at 619 (unsigned draft award was not valid or binding). Undue delay in the resolution of “minor disputes” generally, and the unresolved state of this specific dispute, are not consistent with the goals and public policy reflected in the RLA.

IV. *Conclusion*

The first award was effective, final, and binding following the expiration of the neutral’s expressly stated fifteen day contingency period. Accordingly, CSX’s Motion for Summary Judgment (Document No. 22) is hereby denied, and the UTU’s Motion for Summary Judgment (Document No. 24) is hereby granted. Final judgment shall be entered in favor of plaintiffs United Transportation Union and William S. James and against CSX Transportation, Inc., with costs to plaintiffs.

The RLA provides for an award of attorney fees as part of the costs awarded to a prevailing party. 45 U.S.C. § 153 First (p). As prevailing parties, plaintiffs may

submit a request for costs and attorney fees no later than August 11, 2006. CSX may file a response no later than 21 days later, with any reply by plaintiffs to be filed no later than 10 days later. Unless a party requests an evidentiary hearing, the court expects to rule on any fee request based on the papers.

So ordered.

Date: July 20, 2006

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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